

Order

Michigan Supreme Court
Lansing, Michigan

Entered: July 23, 2002

Maura D. Corrigan,
Chief Justice

2001-33

Proposed Amendments of Rules
2.401, 2.410, 2.506, and 7.213
of the Michigan Court Rules

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Justices

On order of the Court, this is to advise that the Court is considering amendments of Rules 2.401, 2.410, 2.506, and 7.213 of the Michigan Court Rules. Before determining whether the proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment. The Court welcomes the views of all who wish to address the form or the merits of the proposals or to suggest alternatives. Before adoption or rejection, the proposals will be considered by the Court at a public hearing. Notice of future public hearings will be provided by the Court and posted at the Court's website, www.courts.michigan.gov/supremecourt.

Publication of these proposals does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposals in their present form.

[The present language of MCR 2.401 would be amended as indicated below.]

Rule 2.401 Pretrial Procedures; Conferences; Scheduling Orders

(A)- (E) [Unchanged.]

(F) Presence of Parties at Conference. ~~In the case of a conference at which~~ If the court anticipates meaningful discussion of settlement ~~is anticipated~~, the court may direct that ~~persons with authority to settle the case, including the parties to the action, agents of parties, representatives of lienholders, or representatives of insurance carriers, or other persons:~~

- (1) be present at the conference; ~~or (2) be immediately available at the time of the conference; and~~
- (2) have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement.

The court's order may specify whether the availability is to be in person or by telephone.

This subrule does not apply to an early scheduling conference held pursuant to subrule (B).

(G) Failure to Attend; ~~Default; Dismissal~~ or to Participate.

- (1) Failure of a party or the party's attorney or other representative to attend a scheduled conference and to participate in good faith, as directed by the court, may constitutes a default to which MCR 2.603 is applicable or grounds for dismissal under MCR

2.504(B).

- (2) The court shall excuse ~~the a failure of a party or the party's attorney~~ to attend a conference or to participate in good faith, and shall enter an just order other than one of default or dismissal, if the court finds that
- (a) entry of an order of default or dismissal would cause manifest injustice; or
 - (b) ~~the failure to attend~~ was not due to the culpable negligence of the party or the party's attorney.

The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in MCR 2.313(B)(2).

(H)-(I) [Unchanged.]

[The present language of MCR 2.410 would be amended as indicated below.]

Rule 2.410 Alternative Dispute Resolution

(A)-(C) [Unchanged.]

(D) Attendance at ADR Proceedings.

- (1) [Unchanged.]
- (2) Presence of Parties. The court may direct that ~~persons with authority to settle a case, including the parties to the action, agents of parties, representatives of lienholders, or representatives of insurance carriers, or other persons:~~
- (a) be present at the ADR proceeding; ~~(b) or~~ be immediately available at the time of the proceeding; and
 - (b) have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement.

The court's order may specify whether the availability is to be in person or by telephone.

- (3) Failure to Attend; ~~Default; Dismissal~~ or to Participate.
- (a) Failure of a party or the party's attorney or other representative to attend a scheduled ADR proceeding and to participate in good faith, as directed by the court, may constitute a default to which MCR 2.603 is applicable or grounds for dismissal under MCR 2.504(B).
 - (b) The court shall excuse ~~the a failure of a party or the party's attorney~~ to attend an ADR proceeding or to participate in good faith, and shall enter an just order other than one of default or dismissal, if the court finds that
 - (i) entry of an order of default or dismissal would cause manifest injustice; or

- (ii) the failure to attend was not due to the culpable negligence of the party or the party's attorney.

The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in MCR 2.313(B)(2).

(E)-(F) [Unchanged.]

[The present language of MCR 2.506 would be amended as indicated below.]

Rule 2.506 Subpoena; Order to Attend

(A) Attendance of Party or Witness.

(1) [Unchanged.]

(2) The court may require a party and a representative of an insurance carrier for a party with information and authority ~~to settle~~ adequate for responsible and effective participation in settlement discussions to be present or immediately available at trial.

(3) [Unchanged.]

(B)-(I) [Unchanged.]

[The present language of MCR 7.213 would be amended as indicated below.]

Rule 7.213 Calendar Cases

(A) Pre-Argument Conference in Calendar Cases.

(1) At any time before submission of a case, the Court of Appeals may direct the attorneys for the parties and client representatives with ~~settlement~~ information and authority adequate for responsible and effective participation in settlement discussions to appear in person or by telephone for a pre-argument conference. The conference will be conducted by the court, or by a judge, retired judge or attorney designated by the court, known as a mediator. The conference shall consider the possibility of settlement, the simplification of the issues, and any other matters which the mediator determines may aid in the handling of or the disposition of the appeal. The mediator shall make an order that recites the action taken at the conference and the agreements made by the parties as to any of the matters considered, and that limits the issues to those not disposed of by the admissions or agreements of counsel. Such order, when entered, controls the subsequent proceedings, unless modified to prevent manifest injustice.

(2)-(6) [Unchanged.]

(B)-(E) [Unchanged.]

Staff Comment: The proposed amendments of MCR 2.401(F) and (G), MCR 2.410(D)(2) and (3), MCR 2.506(A), and MCR 7.213(A) would add flexibility to the requirement that certain persons with settlement authority attend the proceedings described in those rules. Currently, the rules require

that someone with “authority to settle” or “settlement authority” attend. They also imply a presumption that a default or dismissal is the correct sanction for failing to comply. There are several reasons why it may be impracticable or even impossible for a party to send someone with unlimited settlement authority. The proposed amendments recognize that. They also rephrase the sanctions provisions to lessen the emphasis on defaults and dismissals. Much of the proposed language comes from FRCivP 16(c) and (f), and also Local Rule 16.1 of the US District Court for the Eastern District of Michigan.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court clerk in writing or electronically by November 1, 2002, P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@jud.state.mi.us. When filing a comment, please refer to file 2001-33. Your comments and the comments of others will be posted at www.courts.michigan.gov/supremecourt.